

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOKHA SUONG,

Petitioner,

vs.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; CAMMILLA
WAMSLEY, Seattle Field Office
Director, United States Citizenship and
Immigration Services; BRUCE SCOTT,
Warden of Immigration Detention
Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

No. CV25-2309

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241
AND REQUEST FOR INJUNCTIVE
RELIEF**

PRELIMINARY MATTERS

Under 28 U.S.C. § 2243, the Court must grant a petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents “forthwith,” unless the Petitioner is not entitled to relief. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

Petitioner recognizes that the term “forthwith” includes some flexibility. Petitioner suggests that the Court order Respondents to file a return within five days, and order Petitioner to file a reply within five days thereafter.

Furthermore, Petitioner asks this Court to order Respondents not to remove Petitioner from this district while this case is pending, both “[b]ecause transfer of

Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings,” *Tran v. Bondi, et. al.*, 2:25-cv-01897-JLR-BAT, Dkt. 6, at 3 (Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case involving an ICE detainee), and “under the Court’s inherent power to preserve its ability to hear the case.” *Alves v. U.S. Dep’t of Just.*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (same). *See also M.M. v. Wamsley*, No. 2:25-CV-02074-TMC, 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025) (same).¹

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Sokha Suong
- (b) None
2. Place of confinement:
 - (a) Northwest Immigration Processing Center (NWIPC)
 - (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a contractual arrangement with my custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.
 - (c) Case number or numbers: My A# is 
3. I am currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.
4. I am currently being held on an immigration charge.

¹ For just a few examples of other courts issuing such an order in § 2241 cases involving ICE detainees within the past few months (or reflecting the court had previously issued such an order), *see, e.g., Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. 2:25-CV-00513-SDN, 2025 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order was issued same day as petition was filed); *Lopez Pop v. Noem*, No. 5:25-CV-02589-SSS-SSC, 2025 WL 3050095, at *7 (C.D. Cal. Oct. 3, 2025); *Singh v. Delaney Hall*, No. CV 25-16018 (GC), 2025 WL 2772644, at *1 (D.N.J. Sept. 29, 2025); *Hom v. Ceja*, No. 25-CV-2221-WJM-TPO, 2025 WL 2801449, at *2 (D. Colo. Sept. 17, 2025).

Decision or Action You Are Challenging

5. What are you challenging in this petition: immigration detention.

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States Immigration and Customs Enforcement

(b) Docket number, case number, or opinion number: My A# is 

(c) Decision or action you are challenging: I was initially ordered removed on July 8, 2021. I was detained by ICE from May 2021 through November 2021 (with over four months of that being after my final order of removal). I was released on an order of supervision in November 2021 and was re-detained on September 9, 2025. I have been detained in ICE custody for over six months following my final removal order.

Your Earlier Challenges of the Decision or Action

7-9. First, second, and third appeals: None

10. Motion under 28 U.S.C. § 2255: N/A

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody:

(b) Date of the removal or reinstatement order:

(c) Did you file an appeal with the Board of Immigration Appeals? No.

(d) Did you appeal the decision to the United States Court of Appeals? No.

(1) Name of court:

(2) Date of filing

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. Other appeals:

Other than the appeals listed above, have you filed any other petition, application, or motion about the issues raised in this petition? No.

Grounds for Your Challenge in This Petition

I. Introduction

Mr. Suong is presently detained at the Northwest ICE Processing Center (NWIPC). He has been held in immigration custody for over six months. Removal to the country designated in his final order of removal is not reasonably foreseeable. He continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). He seeks (a) release; (b) an order preventing his re-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that he is a flight risk or a danger to the community, based on changed circumstances after his most recent release by ICE; (c) an order preventing removal to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; and (d) an order barring removal to any third country pursuant to Respondents' punitive removal policy.

Mr. Suong was initially detained in May 2021. He received his final order of removal on July 8, 2021. He was released in late November 2021. He was re-detained without any determination by the government that he had become a flight risk or a danger to the community or that removal was likely in the reasonably foreseeable future.

II. Jurisdiction and Venue

This case arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*

1 This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*
2 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States
3 as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived
4 sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

5 The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*
6 *seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28
7 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's
8 inherent equitable powers.

9 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because
10 Respondents are agencies or officers of agencies of the United States; Respondents
11 Wamsley and Scott reside in this district; and Petitioner is detained in this district.
12 Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the
13 events or omissions giving rise to Petitioner's claims occurred in this district.

14 Because Petitioner is seeking relief related only to his custody status, which is
15 not inconsistent with an order of removal, exhaustion of administrative remedies, if any,
16 is not required.

17 **III. Requirements of 28 U.S.C. §§ 2241, 2243**

18 As addressed above on p. 1, 28 U.S.C. § 2243 sets forth time constraints for an
19 OSC. Petitioner is "in custody" for the purpose of § 2241 because he has been detained
20 by Respondent ICE in Tacoma, Washington, since approximately September 9, 2025.

21 **IV. Parties**

22 Mr. Suong has a final order of removal with Thailand as the country designated
23 for removal. Petitioner is detained in the control and custody of Respondents at
24 NWIPC. As such, Petitioner is a resident of Tacoma, Washington.

Respondent Pamela Bondi is the Attorney General of the United States. In this capacity, Respondent Bondi is the legal custodian of Petitioner. Respondent Bondi is sued in her official capacity.

Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). In this capacity, Respondent Noem is the legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

Respondent Cammilla Wamsley is the Field Office Director for ICE Enforcement and Removal Operations (“ERO”) in Seattle, Washington. As the ERO Seattle Field Office Director, she is Petitioner’s immediate custodian, responsible for her detention at NWIPC, and is the person with the authority to authorize detention or release. Respondent Wamsley is sued in her official capacity.

Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. Mr. Scott is sued in his official capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. C20-700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

Respondent United States Immigration and Customs Enforcement (hereinafter ICE) is the federal executive agency responsible for the enforcement of immigration laws, including the arrest, detention, and removal of noncitizens. Respondent ICE is a legal custodian of Petitioner.

V. Background

Mr. Suong was born to Cambodian refugees in a refugee camp in Thailand. He has no paperwork from either Cambodia or Thailand. He was brought to the United States as a baby. He received a green card and has obtained a GED, an AA degree, and a HVAC certificate.

1 He has a daughter from a prior marriage, for whom he provided child support
2 after his divorce. He continued to support his daughter to some extent after his child
3 support obligations ceased. He is currently in a relationship that has not been
4 formalized, but they consider themselves married. He provided support for his current
5 wife through his work since he was released by ICE in November 2021. He worked in a
6 Trader Joe's warehouse for most of the time until he was re-detained.

7 He has been informed that Respondents have concluded that Thailand will not
8 accept him and that they are attempting to have him removed to Cambodia.

9 **VI. Facts Pertaining to Petitioner's Continued Detention**

10 As Respondents apparently acknowledge, Petitioner cannot presently be returned
11 to Thailand, because he has no connection to Thailand other than being born in a
12 refugee camp there. ICE has asserted to him that it is waiting for a passport to arrive
13 from Cambodia. However, he has no knowledge that ICE has actually taken any steps
14 to have him removed to Cambodia. He has no connection to that country, including no
15 known relatives or friends. He has never been there.

16 **VII. The Legal Framework Regarding Indefinite Detention Pending Removal.**

17 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered
18 removed is mandatory during the so-called 90-day "removal period." 8 U.S.C.
19 § 1231(a)(1)(A). This period begins on the "date the order of removal becomes
20 administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed
21 that a "serious constitutional threat" under the Fifth Amendment's Due Process Clause
22 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court
23 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
24 statute's "basic purpose [of] effectuating [a noncitizen]'s removal[.]" *Id.* at 696-699.

25 The Court further held that the presumptive period during which the detention is
26 reasonably necessary to effectuate a noncitizen's removal is six months; after that, the

1 noncitizen is eligible for conditional release if there is “no significant likelihood of
2 removal in the reasonably foreseeable future.” *Id.* at 701. After the “presumptively
3 reasonable” period of six months, when the noncitizen can “provide[] good reason to
4 believe that there is no significant likelihood of removal in the reasonably foreseeable
5 future,” then “the Government must respond with evidence sufficient to rebut that
6 showing.” *Id.*

7 The issue is not whether Respondents have been able to remove some
8 individuals to a given country. Rather, the court must make an individualized analysis
9 as to a particular detainee. *See Nguyen v. Scott*, -- F.Supp.3d --, 2025 WL 2419288, *17
10 (W.D. Wash. Aug. 21, 2025) (stating increased numbers in total number of removals to
11 Vietnam, including those who entered pre-1995, fails to rebut the evidence presented by
12 Petitioner that “his individual circumstances make removal unlikely.”).

13 When a petitioner has been detained for a total of six months after a final order
14 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the
15 petitioner’s current period of detention is less than six months. “A petitioner’s total
16 length of confinement need not be consecutive to reach the six-month presumptively
17 reasonable limit established in *Zadvydas*.” *Tang v. Bondi*, No. 2:25-CV-01473-RAJ-
18 TLF, 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

19 **VIII. The Law Pertaining to a Noncitizen’s Procedural Due Process Right Not**
20 **to Be Re-detained Absent a Hearing Establishing that the Individual Is**
21 **Either a Flight Risk or a Danger to the Community**

22 Procedural due process requires notice and an opportunity to be heard. *Mathews*
23 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural
24 due process rights, a petitioner must establish (1) a protected property or liberty interest,
25 and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d
26 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,
including the function involved and the fiscal and administrative burdens that the

additional or substitute procedural requirement would entail.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

Petitioner’s interest in not being detained is “the most elemental of liberty interests[.]” *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, at *3, *9 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and ordering immediate release with no re-detention absent “an immigration court hearing . . . held (with adequate notice) to determine whether detention is appropriate.”). *See also e.g.*, *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, *8 (W.D. Wash. Oct. 7, 2025) (finding detainee has liberty interest).

Where there is a liberty interest, determining what procedures are due generally requires examining the factors set forth in *Mathews*:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

E.A. T.-B., 2025 WL 2402130, at *3 (quoting *Mathews*, 424 U.S. at 335).

Given that the liberty interest here is “the most elemental,” numerous courts have found that this first factor weighs heavily in a petitioner’s favor. *See Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, *7 (W.D. Wash. Oct. 7, 2025) (this factor “must be accorded significant weight”). Petitioner’s status as a noncitizen does not negate that interest. “While the temporary detention of noncitizens may sometimes be justified by concerns about public safety or flight risk, the government’s discretion to incarcerate noncitizens is always constrained by the requirements of due process[.]” *E.A. T.-B.*, 2025 WL 2402130, at *3 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

1 The second factor, risk of an erroneous deprivation of liberty, also weighs in a
2 petitioner's favor. A detainee's release to the community on an OREC reflected ICE's
3 determination that Petitioner was neither a flight risk nor a danger to the community.
4 *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *8 (when ICE released Petitioner,
5 "it did so after determining—as required by regulation—that 'such release would not
6 pose a danger to property or persons, and that the alien is likely to appear for any future
7 proceeding.' . . . By issuing the OREC, ICE necessarily found that [Petitioner] was
8 neither a flight risk nor a danger to the community.") (quoting 8 C.F.R. § 236.1(c)(8));
9 *Barrenechea v. Albarran*, No. 25-CV-07883-VC, 2025 WL 2717279, at *1 (N.D. Cal.
10 Sept. 22, 2025) ("ICE's release of Barrenechea on his own recognizance in 2020 can
11 only be understood as reflecting a determination that he did not pose a flight risk or
12 danger to the community").

13 The final factor, the government's interest in detaining a petitioner without
14 providing a pre-deprivation hearing, also weighs in a petitioner's favor. "[T]he
15 government's interest in detaining petitioner without a hearing is low." *Carballo*, 2025
16 WL 2381464, *8 (cleaned up). "In immigration court, custody hearings are routine and
17 impose a minimal cost." *Id.* (cleaned up).

18 As stated in *E.A. T.-B.*, 2025 WL 2402130, at *5, "although it would have
19 required the expenditure of finite resources (money and time) to provide Petitioner
20 notice and hearing on ATD violations before arresting and re-detaining him, those costs
21 are far outweighed by the risk of erroneous deprivation of the liberty interest at issue."

22 The holding that a released detainee was entitled to a pre-deprivation hearing
23 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone—dozens of other courts have
24 reached this conclusion as well. *See, e.g., Pinchi v. Noem*, — F. Supp. 3d —, No.
25 5:25-cv-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) ("Providing
26 [petitioner] with the procedural safeguard of a pre-detention hearing will have

1 significant value in helping ensure that any future detention has a lawful basis.”); *Doe*
2 *v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025) (“[G]iven that Petitioner was
3 previously found to not be a danger or risk of flight and the unresolved questions about
4 the timing and reliability of the new information, the risk of erroneous deprivation
5 remains high.”); *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *4
6 (S.D.N.Y. June 18, 2025) (“Petitioner’s re-detention without any change in
7 circumstances or procedure establishes a high risk of erroneous deprivation of his
8 protected liberty interest.”).

9 In any hearing held by the government to try to justify re-detention, the
10 government bears the burden to establish flight risk or danger by clear and convincing
11 evidence. *See Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL
12 139801, at *7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of
13 courts” have so held). For cases in this district, *see Odimara v. Bostock*, No. 2:24-CV-
14 01412-MJP-TLF, 2025 WL 1490395, at *10 (W.D. Wash. Mar. 27, 2025), *report and*
15 *recommendation adopted*, No. C24-1412 MJP, 2025 WL 1489705 (W.D. Wash. May
16 23, 2025) (citing cases).

17 In addition, the government should be required to meet its burden based on
18 changed circumstances subsequent to a petitioner’s previous release by ICE. *See Duong*
19 *v. Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at *10 (N.D. Cal. Sept. 19, 2025)
20 (holding that any re-detention first required a hearing “whether a material change of
21 circumstances justifies [petitioner’s] re-detention”).

22 **IX. The Law Pertaining to a Noncitizen’s Regulatory Right Not to Be Re-**
23 **detained Absent Notice, an Opportunity to Be Heard, and Findings That**
24 **the Regulatory Standards for Re-detention Have Been Met.**

25 The revocation of a noncitizen’s release is governed by 8 C.F.R. § 241.13(i),
26 which authorizes ICE to revoke a noncitizen’s release under § 1231 for purposes of
removal or for violation of conditions of release. The government may revoke a

1 noncitizen's release and return them to ICE custody due to failure to comply with any
2 of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed
3 circumstances, the [Immigration] Service determines that there is a significant
4 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,"
5 *id.* § 241.13(i)(2).

6 Such revocation of release, even if justified by one of the reasons recognized by
7 regulation, requires notice and an opportunity for the noncitizen to be heard. Upon a
8 determination by the government (namely ICE) to re-detain a person previously
9 released following a removal order:

10 the alien will be notified of the reasons for revocation of his or her
11 release. [ICE] will conduct an initial informal interview promptly after
12 his or her return to [ICE] custody to afford the alien an opportunity to
13 respond to the reasons for revocation stated in the notification. The
14 [noncitizen] may submit any evidence or information that he or she
15 believes shows there is no significant likelihood he or she be removed
16 in the reasonably foreseeable future, or that he or she has not violated
the order of supervision. The revocation custody review will include
an evaluation of any contested facts relevant to the revocation and a
determination whether the facts as determined warrant revocation and
further denial of release.

17 *Id.* § 241.13(i)(3).

18 ICE's decision to re-detain also cannot be arbitrary, but instead is governed by
19 the factors laid out in 8 C.F.R. § 241.13(f), including:

20 the history of the [noncitizen's] efforts to comply with the order of
21 removal, the history of [ICE's] efforts to remove [noncitizens] to the
22 country in question or to third countries, including the ongoing nature
23 of [ICE's] efforts to remove [the noncitizen] and the [noncitizen's]
24 assistance with those efforts, the reasonably foreseeable results of
25 those efforts, and the views of the Department of State regarding the
26 prospects for removal of [noncitizens] to the country or countries in
question.

Id. See also Phan v. Beccerra, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3
(E.D. Cal. July 16, 2025). While courts do not make these determinations in the first

1 instance, they may review them for compliance with the regulation. *See id.*; *Nguyen v.*
2 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing
3 *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

4 **X. The Legal Framework for Third-Country Removals**

5 The immigration laws delineate the proper procedures by which a country may
6 be designated for removal. *See* 8 U.S.C. § 1231(b). These procedures move in
7 incremental steps.

8 First, an individual with a removal order may designate the country to which
9 they want to be removed, and the government *shall* remove the individual to that
10 country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if
11 (1) the individual fails to designate a country promptly; (2) the government of that
12 country does not inform the U.S. government finally, within 30 days after the date the
13 U.S. government first inquires, whether the government will accept the individual into
14 that country; (3) the government of the country is not willing to accept the individual
15 into the country; or (4) the government decides that removing the individual to that
16 country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

17 Second, if the individual is not removed to the country they designated under
18 § 1231(b)(2)(A), the government shall remove the individual to the country of which
19 the individual is a “subject, national, or citizen” unless the government of that country
20 does not inform the U.S. government or the individual within 30 days after first inquiry
21 or within another reasonable period of time whether the government will accept the
22 individual into the country or the country is not willing to accept the individual into the
23 country. 8 U.S.C. § 1231(b)(2)(D).

24 Third, if the individual is not removed to either the country of their designation
25 or the country of which they are a subject, national, or citizen, then the government
26 shall remove them to any of the following options: (1) the country from which the

1 individual was admitted to the United States; (2) the country in which is located the
2 foreign port from which the individual left for the United States or for a foreign
3 territory contiguous to the United States; (3) the country in which the individual resided
4 before the individual entered the United States and from which the individual entered
5 the United States; (4) the country in which the individual was born; or (5) the country in
6 which the individual's birthplace is located when the individual was ordered removed.

7 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to
8 remove the individual to any of these countries may the government remove the
9 individual to "another country whose government will accept [them] into that country."

10 8 U.S.C. § 1231(b)(2)(E)(vii).

11 Notwithstanding any of these procedures, the statute prohibits removal to a third
12 country where a person may be persecuted or tortured, a form of protection known as
13 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not
14 remove [a noncitizen] to a country if the Attorney General decides that the
15 [noncitizen's] life or freedom would be threatened in that country because of the
16 [noncitizen's] race, religion, nationality, membership in a particular social group, or
17 political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is
18 a mandatory protection.

19 Similarly, Congress codified protections enshrined in the Convention Against
20 Torture (CAT) prohibiting the government from removing a person to a country where
21 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
22 ("FARRA"), Public Law 105-277, div. G, sec. 2242, 112 Stat. 2681, 2631-822 (8
23 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite,
24 or otherwise effect the involuntary return of any person to a country in which there are
25 substantial grounds for believing the person would be in danger of being subjected to
26 torture, regardless of whether the person is physically present in the United States."); 28

1 C.F.R. § 200.1; §§ 208.16–208.18, 1208.16–1208.18. CAT protection is also
2 mandatory.

3 To comport with the requirements of due process, the government must provide
4 notice of the third-country removal and an opportunity to respond. Due process requires
5 “written notice of the country being designated” and “the statutory basis for the
6 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F.
7 Supp. 3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*
8 *Sec.*, No. 25-CV-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
9 removals to third countries, i.e., removal to a country other than the country or
10 countries designated during immigration proceedings as the country of removal on the
11 noncitizen’s order of removal, must be preceded by written notice to both the
12 noncitizen and the noncitizen’s counsel in a language the noncitizen can understand.”
13 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
14 requires notice to the noncitizen of the right to apply for asylum and withholding to the
15 country where they will be removed). The government must be able to show evidence
16 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
17 378 F.3d 932, 939 (9th Cir. 2004), *as amended* (Aug. 24, 2004), *amended sub nom. El*
18 *Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the
19 time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii),
20 the government must be able to show that the proposed country *will* accept the
21 [individual]”).

22 Due process also demands that the government “ask the noncitizen whether he or
23 she fears persecution or harm upon removal to the designated country and memorialize
24 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
25 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
26 about what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019; *cf. D.V.D.*,

1 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful
2 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
3 prior to removal.”) (emphasis omitted).

4 If the noncitizen claims fear, measures must be taken to ensure that the
5 noncitizen can seek asylum, withholding, and relief under CAT before an immigration
6 judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring
7 the government to move to reopen the noncitizen’s immigration proceedings if the
8 individual demonstrates “reasonable fear” and to provide “a meaningful opportunity,
9 and a minimum of fifteen days, for the noncitizen to seek reopening of their
10 immigration proceedings” if the noncitizen is found to not have demonstrated
11 “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a
12 respondent to file a motion to reopen and seek relief).

13 Finally, notice of the country to which the noncitizen will be removed must not
14 be “last minute” because that would deprive an individual of a meaningful opportunity
15 to apply for fear-based protection from removal. *Andriasian*, 180 F.3d at 1041. They
16 must have time to prepare and present relevant arguments and evidence and to seek
17 reopening of their removal case.

18 **XI. Facts Pertaining to Punitive Banishment to Third Countries**

19 Since January 2025, Respondents have developed and implemented a policy and
20 practice of removing individuals to third countries, without first following the
21 procedures in the INA for designation and removal to a third country and without
22 providing fair notice and an opportunity to contest the removal in immigration court.

23 Respondents reportedly have negotiated with at least 58 countries to accept
24 deportees from other nations. On June 25, 2025, the *New York Times* reported that
25 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
26

1 Rwanda—had agreed to accept deportees who are not their own citizens.² Since then,
2 ICE has carried out highly publicized third-country deportations to South Sudan and
3 Eswatini. It also attempted—and completed—an “end-run” around the protections of
4 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
5 them on to their countries of citizenship despite fears of persecution.

6 Punishment and deterrence appear to be the point of the Administration’s third-
7 country removal scheme. The Administration has reportedly negotiated with countries
8 to have deportees imprisoned in prisons, camps, or other facilities. The government
9 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200
10 deported Venezuelans in a maximum-security prison notorious for gross human rights
11 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of
12 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a
13 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men,
14 including one pre-1995 Vietnamese refugee, to South Sudan. The men have been
15 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the
16 tiny African nation of Eswatini, including one man from Vietnam, where they are
17 reportedly being held in solitary confinement.

18 The Administration has hand-selected countries known for human rights abuses
19 and instability for these third-country deportation agreements to frighten people in the
20 United States into self-deporting or to accept removal to their home countries. Indeed,
21 conditions in South Sudan are so extreme that the U.S. State Department website warns
22 Americans not to travel there, and if they do, to prepare their will, make funeral
23 arrangements, and appoint a hostage-taker negotiator first.

24
25
26 ² Edward Wong, et al., *Inside the Global Deal-Making Behind Trump’s Mass*
Deportations, N.Y. Times (June 25, 2025), [https://www.nytimes.com/2025/06/25/us/](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)
[politics/trump-immigrants-deportations.html](https://perma.cc/64G9-XYGB) [<https://perma.cc/64G9-XYGB>].

1 On July 9, 2025, ICE issued a new memo to staff instructing that, when seeking
2 to remove an individual to a country not designated on that person's removal order, ICE
3 may deport that person without any procedures for notice or an opportunity to be heard
4 if the State Department confirms that it has received diplomatic assurances that
5 individuals will not be persecuted or tortured (Exh. A). If no diplomatic assurances are
6 received, the ICE memo instructs officers to serve on the individual a Notice of
7 Removal that includes the intended country of removal. It instructs officers not to ask
8 whether the individual is afraid of removal to that country. It states that officers should
9 "generally wait at least 24 hours following service of the Notice of Removal before
10 effectuating removal" but that "[i]n exigent circumstances, [ICE] may execute a
11 removal order six (6) or more hours after service of the Notice of Removal as long as
12 the [noncitizen] is provided reasonable means and opportunity to speak with an attorney
13 prior to removal."

14 The memo further instructs that if the noncitizen "does not affirmatively state a
15 fear of persecution or torture if removed to the country of removal listed on the Notice
16 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
17 on the notice." If the noncitizen "does affirmatively state a fear if removed to the
18 country of removal," then ICE will refer the case to U.S. Citizenship and Immigration
19 Services ("USCIS") for a screening for eligibility for withholding of removal and
20 protection under the Convention Against Torture. "USCIS will generally screen within
21 24 hours." If USCIS determines that the noncitizen does not meet the standard, the
22 individual will be removed. If USCIS determines that the noncitizen has met the
23 standard, then the policy directs ICE to either move to reopen removal proceedings "for
24 the sole purpose of determining eligibility for [withholding of removal protection] and
25 CAT" or designate another country for removal.
26

1 The eight men who were ultimately deported to South Sudan all claimed fear of
2 removal to South Sudan. None of those men were provided a fear screening by a
3 USCIS officer or otherwise, despite the fact that they were held by ICE for six weeks
4 on a U.S. military base in Djibouti before their final removal to South Sudan.

5 XII. The Law Governing Punitive Removal Practices

6 It is bedrock law that the U.S. government may not impose or inflict an infamous
7 punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court
8 ruled that while deportation itself was not a punishment, the government could not
9 attach punitive conditions to deportation—in that case, imprisonment at hard labor—
10 absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth,
11 and Eighth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

12 Importantly, the Court distinguished deportation, which the Court reasoned is
13 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of
14 a citizen from his country by way of punishment,” from government actions aimed at
15 punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236.
16 The Court explained that deportation “is but a method of enforcing the return to his own
17 country of [a noncitizen] who has not complied with the conditions upon the
18 performance of which the government of the nation, acting within its constitutional
19 authority and through the proper departments, has determined that his continuing to
20 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730
21 (1893)). But the Court admonished that the government may not “declare unlawful
22 residence within the country to be an infamous crime, punishable by deprivation of
23 liberty and property . . . unless provision were made that the fact of guilt should first be
24 established by a judicial trial.” *Id.* at 237.

25 Deportation of individuals to third countries to be imprisoned or harmed is
26 unquestionably punishment.

Grounds for Relief

Ground One: Petitioner's Continued Detention in Immigration Custody Violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution Because There Is No Significant Likelihood that Petitioner Will Be Removed in the Reasonably Foreseeable Future.

The allegations in the above paragraphs are realleged and incorporated herein.

Because Petitioner's removal order became final on July 8, 2021, the removal period has long since expired, and detention is no longer required under 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has passed.

There is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Respondents have had four years to remove Mr. Suong. To Mr. Suong's knowledge, they made no effort during that period to remove him to Thailand or anywhere else. Only recently did they assert that they were making efforts to remove him to Cambodia. However, given his complete lack of ties to Cambodia, he does not believe there is any reasonable likelihood that Cambodia will accept him.

Therefore, the burden shifts to the government to rebut that showing. The government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug. 21, 2025) (granting preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at *6 (same).

Ground Two: Procedural due process

The allegations in the above paragraphs are realleged and incorporated herein.

Petitioner has a liberty interest in not being re-detained. Applying the three-factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is also high, because ICE's previous release of him necessarily reflected a conclusion that he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*,

1 “ICE revoked that release without any reassessment of those factors.” 2025 WL
2 2841574, at *8.

3 Finally, the cost to the government of providing a hearing is low, and
4 significantly outweighed by the other factors.

5 **Ground Three: Failure to Comply With Regulations**

6 The allegations in the above paragraphs are realleged and incorporated herein.

7 Respondents have not complied with their obligations under 8 C.F.R. § 241.13
8 and therefore Petitioner is entitled to release. On information and belief,

9 a) Respondents did not make a determination either that, on account of changed
10 circumstances, there was a significant likelihood that Petitioner would be removed in
11 the reasonably foreseeable future or that Petitioner violated the conditions of release;

12 b) to the extent that Respondents made such a determination, they lacked an
13 adequate basis to do so and did not properly consider the factors specified in the
14 regulations;

15 c) Respondents did not timely notify Petitioner in writing of the reasons for
16 revocation in a manner that he could reasonably respond to;

17 d) Respondents did not conduct the required initial informal interview;

18 e) Respondents did not afford Petitioner an opportunity to respond; and

19 f) Respondents did not advise Petitioner of the right to request a review of the
20 detention and did not comply with the requirements for such review.

21 **Ground Four: Violation of the Fifth Amendment, 8 U.S.C. § 1231, Convention**
22 **Against Torture, Implementing Regulations, and the Administrative Procedure**
23 **Act**

24 The allegations in the above paragraphs are realleged and incorporated herein.

25 The Fifth Amendment, the INA, the CAT, and implementing regulations
26 mandate meaningful notice and opportunity to respond to any attempt to remove
Petitioner to a third country in reopened removal proceedings. They also require an

1 opportunity for Petitioner to make a fear-based claim against removal to a third country
2 in reopened removal proceedings. Respondents' policy for third-country removals
3 violates all of these laws because it directs ICE agents to remove individuals to third
4 countries without any notice or process *at all* where diplomatic assurances are received
5 and, where no diplomatic assurances are received, to provide flagrantly insufficient
6 notice (6–24 hours) and opportunity to respond, in violation of the statute, regulations,
7 and Fifth Amendment.

8 Prior to any third-country removal, Petitioner must be provided with
9 constitutionally and statutorily compliant notice and an opportunity to respond and
10 contest that removal if he has a fear of persecution or torture in that country in reopened
11 removal proceedings. *See Nguyen*, 2025 WL 2419288, at *29 (granting preliminary
12 injunction against “removing Petitioner to a country other than [home country] without
13 notice and a meaningful opportunity to be heard in reopened removal proceedings with
14 a hearing before an immigration judge”).

15 **Ground Five: Punitive Third-Country Banishment; Violation of Fifth and**
16 **Eighth Amendments**

17 The allegations in the above paragraphs are realleged and incorporated herein.

18 Under the Fifth Amendment to the U.S. Constitution, no person shall “be held to
19 answer for a capital, or otherwise infamous crime, unless on a presentment or
20 indictment of a Grand Jury;” “be subject for the same offence to be twice put in
21 jeopardy of life or limb;” or “be deprived of life, liberty, or property, without due
22 process of law.”

23 The Eighth Amendment provides that no “cruel and unusual punishments” may
24 be inflicted.

25 The U.S. Supreme Court long ago held that the government may not inflict upon
26 individuals an “infamous punishment” in addition to deportation as a penalty for an

1 immigration violation, absent criminal charges, a judicial trial, and attendant
2 constitutional protections. *Wong Wing*, 163 U.S. at 236–38.

3 Petitioner was convicted and completed any sentences for his criminal
4 convictions years ago. His convictions arguably made him removable from the United
5 States, but they do not authorize the government to inflict, as a matter of executive
6 policy and discretion, additional punishment on him. Respondents’ third-country
7 removal program is punitive in both its nature and its execution.

8 The government has arranged for third countries to receive deportees and
9 imprison them on arrival, possibly indefinitely, and often in abhorrent conditions. It has
10 selected countries notorious for human rights abuses and instability for third-country
11 removal arrangements. It has targeted individuals with criminal convictions for third-
12 country removals, where they will be imprisoned and harmed, and publicly broadcast
13 those removals to demonize and dehumanize the individuals subjected to these practices
14 and strike fear in the immigrant community to send a message of retribution and
15 deterrence.

16 Respondents’ third-country removal program is more than a publicity stunt. The
17 hundreds of individuals who have already been subjected to it have been banished in
18 foreign prisons upon arrival without charge and often without communication with the
19 outside world, including their families and lawyers. Respondents may not subject
20 Petitioner to their third-country removal program designed to impose a severe
21 punishment on their subjects. Such conduct “shocks the conscience” under Fifth
22 Amendment substantive due process, is cruel and unusual punishment, and may not be
23 imposed without charge and a judicial trial.

24 Respondents may not seek to remove Petitioner to a third country under their
25 punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at *29
26

1 (granting preliminary injunction against “removing Petitioner to any country where he
2 is likely to face imprisonment upon arrival”).

3 **Prayer for Relief**

4 Petitioner respectfully requests that this Court:

5 (a) Assume jurisdiction over this action;

6 (b) Issue an Order directing Respondents to show cause why this Petition
7 should not be granted within five days;

8 (c) Order Respondents to immediately release Petitioner from custody;

9 (d) Order that Respondents may not re-detain Petitioner without first holding
10 a hearing before a neutral decisionmaker at which the government bears the burden of
11 establishing flight risk or danger to the community by clear and convincing evidence
12 based on changed circumstances since Petitioner was previously released;

13 (e) Order that Respondents may not remove or seek to remove Petitioner to a
14 third country without notice and meaningful opportunity to respond in compliance with
15 the statute and due process in reopened removal proceedings;

16 (f) Order that Respondents may not remove Petitioner to any third country
17 because Respondents’ third-country removal program seeks to impose unconstitutional
18 punishment on its subjects, including imprisonment and other forms of harm; and

19 (g) Order all other relief that the Court deems just and proper.

20 **Verification Pursuant to LCR 100(e)**

21 Counsel verifies that Petitioner authorizes this petition. It does not personally
22 bear Petitioner’s signature because of the significant difficulty for counsel in meeting
23 with Petitioner in person and because mailing the petition to Petitioner and having it
24 mailed back would cause delay that would only extend the period of his unlawful
25 detention. Counsel knows the facts asserted above or alleges them on information and
26 belief, based on information obtained from the government and/or Petitioner.

1 DATED this 18th day of November 2025.

2 Respectfully submitted,

3 *s/ Alan Zarky*

4 Assistant Federal Public Defender

5 Attorney for Sokha Suong